

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company,)	
Cambridge Electric Light Company, and)	
Commonwealth Electric Company, d/b/a)	D.T.E. 05-84
NSTAR Electric)	
)	

COMMENTS OF TRANSCANADA POWER MARKETING LTD.
(December 19, 2005)

I. Introduction and Background

In response to the Notice issued by the Department of Telecommunications and Energy (the "Department") on November 30, 2005, TransCanada Power Marketing Ltd. (TransCanada) submits the following comments on the filing in the above-captioned docket. TransCanada has a Massachusetts office and is actively engaged in New England as a competitive wholesale and retail supplier of electricity. More specifically, TransCanada competes to be the retail supplier for various large commercial and industrial customers in the Northeast, including in Massachusetts. TransCanada would be directly and adversely affected by NSTAR's proposal in this docket and urges the Department to reject that proposal.

On November 21, 2005 the operating companies of NSTAR Electric, including Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (referred to herein as "NSTAR") filed proposed revised tariffs relating to NSTAR's Terms and Conditions for Distribution Services and Competitive Suppliers. NSTAR states that, to address perceived load volatility with respect to Default Service and its perceived negative effect on

some customers, it is proposing to revise NSTAR's Terms and Conditions of Service. The proposed revision if allowed would prohibit customers taking Default Service from returning to the same retail competitive supplier that previously served them for a period of six months from the effective date of change from competitive retail supply to Default Service.

TransCanada objects to this proposed change on the grounds that it unnecessarily and excessively restricts retail competition and the ability of customers to freely choose their competitive suppliers. In effect, NSTAR has characterized its customers' exercise of contractual options regarding retail supply as "gaming", and has sought to restrict such retail choice. Implementing this proposed change would decrease customer options for competitive retail supply in Massachusetts and potentially increase the cost for such supply. NSTAR has sought this change without providing substantial evidence that a problem exists and that its proposed solution is the one most narrowly tailored to solve the perceived problem. TransCanada submits that, if in fact there is a problem that needs to be solved (a fact not established by the NSTAR filing), the solution should be one that is designed and implemented in a way to minimize the harm to competition, and ultimately to customers, in Massachusetts.

II. Comments

A. The six month prohibition will harm competition and deprive customers of the benefits of competition.

Regrettably, NSTAR has chosen to discredit its customers and their competitive retail suppliers by portraying as "gaming" the exercise of contractual rights to move off competitive retail supply and on to Default Service, and back, depending on market conditions. Such rights can be valuable to both the customer and its competitive retail supplier by providing flexibility. Competitive suppliers can factor this flexibility into their pricing and thereby offer customers lower pricing than they would otherwise receive without such flexibility. Thus, customers

directly benefit from this flexibility by being able to exercise the option themselves or indirectly by receiving lower pricing or other contractual benefits from their competitive retail suppliers by giving the option to them.

Prohibiting this flexibility in contracting and in choice of competitive supplier can only harm retail competition in Massachusetts. The six month prohibition period proposed by NSTAR would deprive customers of the intended benefits received from deregulation by removing important flexibility they have in their decision-making and contracting processes. In many instances, particularly during periods of high market prices, customers delay decision-making for contract renewal until the end of their current contract term. The re-contracting process often means the current contract expires, necessitating a return to Default Service. This ability for customers to return to Default Service enables those customers and their retail suppliers to make appropriate choices in light of market conditions. NSTAR's proposal would prohibit the customer from re-signing with its former supplier, thereby limiting the number of suppliers it has to choose from. The already short list of retail suppliers – with one major supplier in New England having announced the sale of its business – would only tend to get shorter. Some retail suppliers spend years and considerable resources developing a successful relationship with a customer. To put in place a rule that would prohibit those suppliers from renewing their relationships with particular customers that have gone on Default Service will only serve to drive competitive retail suppliers out of the Commonwealth.

NSTAR's proposal is based on the unsupported allegation that an improper "gaming" of the system is taking place. A more objective and accurate characterization of the situation is that NSTAR has appropriately developed a Default Service design that allows customers to freely and readily enter and leave Default Service. Competitive retail suppliers have facilitated that

customer choice through their product offerings and contracting practices. To the extent that unprecedented market volatility creates a situation where the Default Service rate is favorable, customers and their retail suppliers will properly take advantage of the rate. Entering and exiting Default Service flexibly in response to market conditions is not improper “gaming” of the system, but instead is a rational response to market conditions by NSTAR’s customers and their competitive retail suppliers.

Adopting the change proposed by NSTAR would be contrary to the retail competition policy objectives of the Department and the Massachusetts legislature that have been clearly articulated since the inception of retail competition in the Commonwealth. The Department should be vigilant in rejecting such attacks on retail competition, and should reject NSTAR’s proposed change.

B. Even if NSTAR can demonstrate that there is a problem, NSTAR should only be allowed to implement the solution that is least harmful to retail competition.

NSTAR has not clearly demonstrated in its filing that its smaller or less creditworthy customers have been disadvantaged as a result of large commercial and industrial (“C&I”) customers exercising customer choice. Nor has NSTAR shown the extent of the purported harm. Thus, NSTAR’s filing suffers from the lack of a clearly defined problem. Even if NSTAR had shown that there is in fact a problem and its extent, NSTAR has not proposed a solution that is the least harmful to retail competition and customer choice. The Department should require NSTAR to do so given the strong public policy in the Commonwealth favoring and seeking to promote retail competition and customer choice. Instead, the proposed solution seems calculated to do more harm than good to such competition and choice. Other more narrowly tailored

alternatives exist, if the Department concludes that there is in fact a “problem” that needs to be fixed. These alternatives include the following:

1. Redesign customer rate classifications: NSTAR contends that two groups of its customers are disadvantaged by increased risk premiums that wholesale suppliers need to impose due to customer mobility in bidding its “RFPs for Default Service for Large C&I customers”. In its filing, NSTAR characterizes these two groups as “smaller customers,” and “lower credit quality customers”. NSTAR contends that these two groups have limited or no ability to leave Default Service for a competitive retail supplier and, therefore, must pay the higher “premiums” imposed by wholesale suppliers of Default Service.

The first problem with NSTAR’s contention is obvious – “smaller customers” are inappropriately included as a group to be served by NSTAR in its RFP for large C&I customers. NSTAR could solve this problem itself by properly designating the rate classes to be served by the RFP for large C&I customers. As one example, rate classifications B7 and G8, which are among the classes served by NSTAR’s RFP for large C & I customers, have a size threshold that begins at the extremely low limit of 10KW. Thus, if in fact smaller customers are disadvantaged by larger customers in the same rate classification, then NSTAR should separate out those smaller customers, and have a separate supply bid for them. This more narrowly tailored solution would be far less damaging to retail competition than the prohibition on customer choice proposed by NSTAR.

Additionally, it is simply not true, as NSTAR contends, that less creditworthy customers do not have competitive supply options. These customers can readily receive competitive supply by posting security or by making advance payments. In fact, if these “lower credit quality customers” are discouraged from taking NSTAR’s Default Service because of its occasional higher cost, other customers may benefit to the extent that these “lower credit quality customers”

late pay – or simply do not pay – their electric bills. The costs borne by NSTAR’s other customers may be lowered if the late- or non-paying customers are served by competitive suppliers who exercise greater payment discipline.

2. Real Time Pricing: Another alternative to the alleged problem would be for NSTAR to move away from fixed pricing for its supply to serve this Default Service customer group. An efficient pricing alternative would be real time, or spot pricing. Under this option, no competitive wholesale provider would be involved, and NSTAR would simply accumulate its wholesale costs incurred each month and bill these customers’ actual costs. Further, NSTAR could play a lead role in advancing the efficiency of the overall wholesale marketplace if it installed necessary metering to bill these customers at the actual hourly price for electricity. Customers could respond to high hourly prices by curtailing usage. As the Department is well aware, the fact that so few customers have a visible spot price has created significant difficulties in New England’s wholesale markets. If NSTAR solved the perceived problem with this option, then instead of undermining retail competition, NSTAR could play a constructive role in advancing the development of the overall New England competitive markets for electricity to the benefit of all of its customers.

3. Fixed Block Procurement: The final alternative to NSTAR’s prohibition of customer choice to be discussed in these comments (although even more alternatives and variations exist) is a fixed block alternative. Under this option, NSTAR could simply fix the block size of the power it desires to procure from competitive wholesale suppliers. Any imbalance – either excess or deficiency – would be sold or procured by NSTAR from the NEPOOL spot market. Under this construct, there is absolutely no volume risk imposed on NSTAR’s competitive wholesale supplier and therefore no risk premium would be charged.

Again, as with the real-time pricing option, customers on this rate will not have a fixed forward price available to them, but they can take comfort in the fact that the power procurement was conducted in an efficient and effective manner.


C. Harm to retail competition from NSTAR's proposed prohibition would only tend to be exacerbated by implementation logistics.

Even if the Department concludes not only that the problem alleged by NSTAR exists, and that the best solution to it is the prohibition of customer choice proposed by NSTAR, the Department should be concerned about NSTAR's ability to implement the proposal without doing even more harm to retail competition. Utility information systems are a critical part of ensuring that customer choice works. Unhappily, TransCanada has experienced numerous problems with NSTAR's information systems, including important problems for both the customer and TransCanada, such as inadvertent unenrollments and lack of meter reads. Based on this experience, TransCanada is concerned that NSTAR's proposal, which lacks an express assurance that its information systems will be suitably modified for the task it lays out for itself, may create a logistical snarl that diverts supplier resources from activities that benefit customers. If the Department concludes that NSTAR's proposal is the best solution from a retail competition standpoint to a problem that is clearly defined and in need of a solution, then the Department should not allow NSTAR to implement the solution until it has demonstrated that it can do so without further disruption to customer choice and retail supply in Massachusetts.

III. Conclusion

For the reasons stated above, TransCanada urges the Department to reject NSTAR's proposed revisions to its Terms and Conditions. NSTAR should be required to clearly define the problem that needs to be solved and, if it does so, should propose a solution that is the least harmful to retail competition and customer choice with a clear plan for its smooth implementation.

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By Its Attorney


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